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This course outline on estate planning is designed for teachers and leaders in New York State public school adult education programs. Basic elements in estate planning (inventory, objectives, analysis, problem areas, administration, and others) are outlined, followed by information and guidelines on accumulating an estate, conserving an estate, making wills, creating trusts, and the special problems of businessmen and employees. Such aspects as estate taxes, allowable tax reductions and exemptions, and property that can or cannot be included in a will, are considered. Also included are suggested classroom techniques for instructors, pointers for discussion leaders, and the American Bar Association's Information Opinion A of 1959, pertaining to professional ethics in estate planning. (ly)

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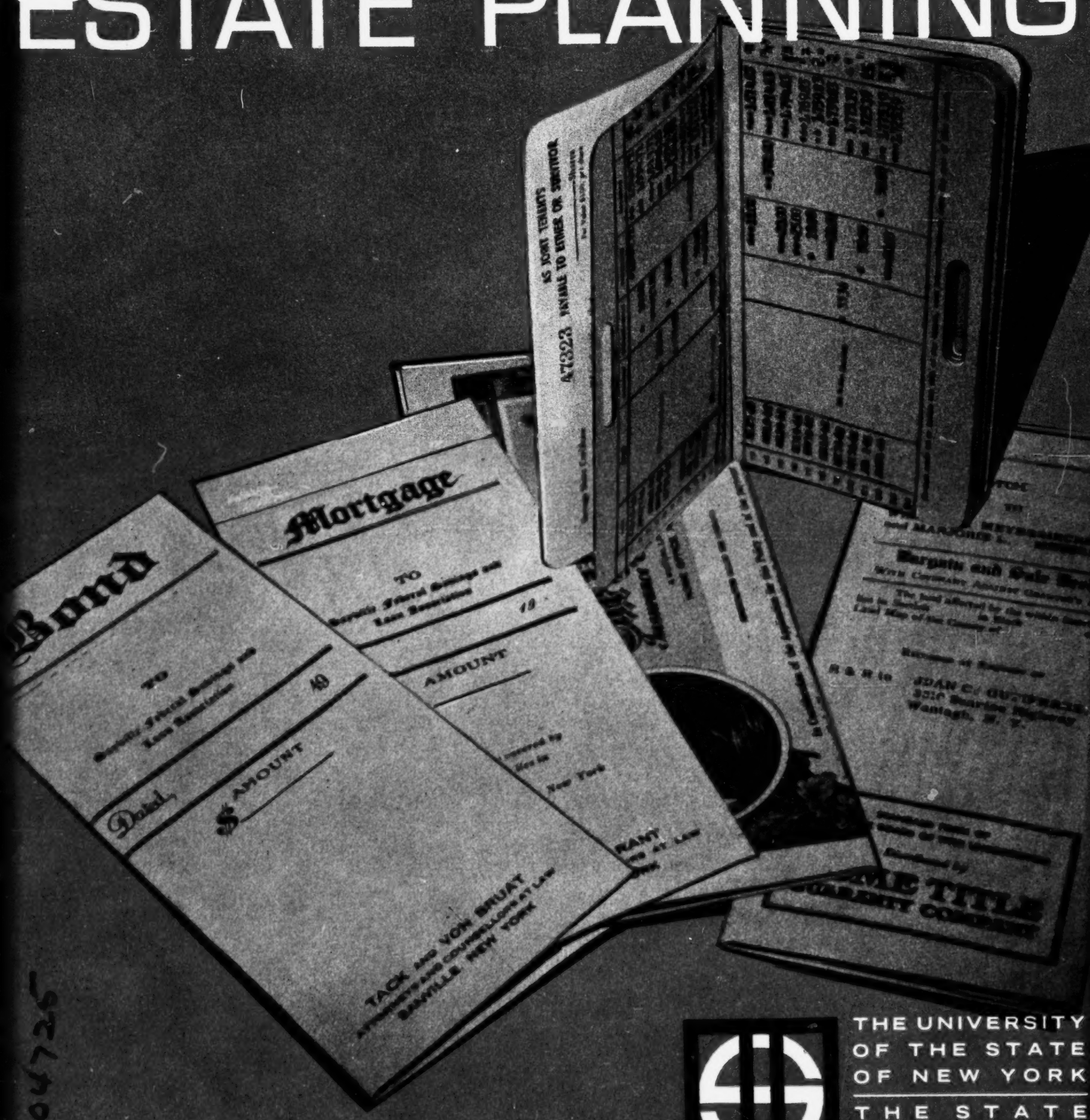
VERYMAN'S ESTATE PLANNING



THE UNIVERSITY OF THE STATE OF NEW YORK
THE STATE EDUCATION DEPARTMENT

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ESTATE PLANNING

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Bulletin No. 151

A Suggested Outline for an Adult Group

THE UNIVERSITY OF THE STATE OF NEW YORK
THE STATE EDUCATION DEPARTMENT
BUREAU OF BUSINESS AND DISTRIBUTIVE EDUCATION
ALBANY, NEW YORK

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FOREWORD

The increasing difficulty in accumulating, conserving and distributing an estate under present tax and legal requirements has generated an interest in an adult course in estate planning to be taught in the public school adult programs of the State. Trust officers, accountants, lawyers, life underwriters, investment counselors, and others engaged in estate planning find a growing interest on the part of the public in the skills and knowledges needed for adequate financial planning and management. This course has been developed to meet these interests.

Students enrolled in the course must realize that they will learn only general principles and will not become experts in estate planning. A hypothetical case will be continued throughout the course. Naturally the solutions suggested to this case problem will not solve all the personal problems of the students. Each student should consult the advisers necessary to solve his particular problems. Just as our course, "Law Everyone Should Know," does not prepare a person for a career in law, so this course does not propose to make a person a professional estate planner.

This course outline was developed by a committee of business and professional men actively engaged in estate planning and was directed by our supervisor of adult business education, G. Hunting Sherrill. Members of the committee, all employed in Albany, New York, were: James E. Barton, Estate Planning Officer; James E. Conway, Attorney; Robert E. Fallon, Investment Counselor; Frank P. Staucet, Life Insurance Underwriter and Max J. Zuckerman, Certified Public Accountant.

In preparing this course outline great effort has also been made to conform to the principles and regulations set forth by interested federal and state agencies.

Special acknowledgment is made to the National Commercial Bank and Trust Company for its assistance in providing facilities for committee meetings, furnishing the kit of materials for the course, and offering the course on a voluntary trial basis to some of its employees.

Appreciation is expressed to the Lawyers Co-operative Publishing Company and the Commerce Clearing House, Inc. for permission to reproduce certain of their materials.

Acknowledgment is made to the Bureau of Vocational Curriculum Development and Industrial Teacher Training for technical and other assistance in preparing this manual for publication.

Joseph R. Strobel
Assistant Commissioner for
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John E. Whitcraft
Chief
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Albany, New York
October 1964

INTRODUCTION

This course outline has been developed to assist teachers or leaders of classes in Every Man's Estate Planning - Now and Future which are taught in the public school adult education programs of New York State. These instructors are usually lay teachers who are successfully engaged in one or more phases of estate planning. By following this outline, even though several different persons teach the various units in the course, there will be a continuity from unit to unit without undue repetition.

The subject of estate planning is of great interest and importance to more and more persons. This course attempts to point out the principal factors one should consider in accumulating, conserving and distributing an estate and to indicate the various types of persons qualified to give advice and counsel in this field. It should be emphasized that planning one's estate is a complex procedure which requires assistance from experts. It is not a thing which one should attempt to do without competent advisers.

Because of the many areas touched by the function of estate planning, the course is envisaged as conducted in part by an attorney, a trust officer, an accountant, a life underwriter, and an investment broker or counselor - but not necessarily in that sequence or with that extensive a faculty.

As a matter of fact, a panel discussion among <u>all</u> of those in such a group of professionals can afford an excellent summary of the course. Because modern estate planning is best done as a team effort by various advisers to a family, the concept of an "instruction team" lends itself very well to effective presentation to a class and should encourage greater local participation in the instruction.

The term "estate" has different meanings to different people. As used in this course it means the property, both real and personal, tangible and intangible, which a person owns. Naturally there are small estates and large estates, living estates and estates of deceased persons. All of these are important, but even the small estates of both living and deceased persons should have the most careful planning. It must be emphasized that every man's estate must be planned before death. A dead man "tells no tales" and makes no plans, but surviving members of Everyman's family still have their own planning to do.

Members of the teaching "team" should keep in mind that each member represents one phase of estate planning and is qualified in that area. Questions or information related to other areas of estate planning should be referred to the instructors in the other areas. For example an accountant would not give advice on wills and a life underwriter would not suggest an accounting system. Similarly lawyers, investment counselors, and trust officers have specific areas of knowledge and responsibilities in this joint effort of estate planning and would not offer advise outside their respective fields. When the final estate plan has been developed, it should be approved by all who had a part in the plan.

A kit of materials for each student has been furnished by the National Commercial Bank and Trust Company. This kit includes a copy of the case problem (introduced in Unit I and used throughout the course), forms, work sheets, tax tables, and special forms. These kits may be obtained gratis from the Bureau of Business and Distributive Education, State Education Department, Albany, New York 12224.

Directors of adult education may receive special assistance in organizing courses in estate planning by directing a request to the Bureau of Business and Distributive Education.

To: Directors of Adult Education

This course in Estate Planning should be of interest to most adults in your community. It is a short course of six sessions to acquaint persons with the necessity for adequate and correct planning in order to accumulate and conserve an estate.

Estates vary in size and complexity from the very small to the very large. Today, most responsible adult families own a home, have life insurance, have bank savings accounts, own building and loan shares or government bonds, are covered by Social Security, and are employed in businesses where pension or profit-sharing plans are in operation. In addition, many adults are now stockholders in large and small corporations.

Some adults own their own businesses, either sole proprietorships or partnerships. In every community there are countless professional people such as doctors, surgeons, lawyers, dentists, teachers, accountants, and ministers. All of these are potential students for the course in Estate Planning.

Estate planning is a family affair and should be of interest to wives and mature children. Such planning must be accomplished while a person is living, and, if properly done, can contribute to the happiness of many people and several generations.

Instructors may be selected from among lawyers, trust officers, life underwriters, accountants, investment brokers, and others. Each instructor must be professionally competent and fully respected by his peers in his profession. Instructors may be obtained through local or county professional associations such as: lawyers, accountants, life underwriters, investment counselors, bankers and trust officers, etc. The course may well be recommended by or co-sponsored by banks, service clubs, individual

businesses, professional organizations or groups of business people.

If you wish assistance in offering and promoting this course, direct a request to the Bureau of Business and Distributive Education, State Education Department, Albany, New York 12224.

CONTENTS

		Page
Foreword		iii
Introduction		v
To Directors of Adult Education		vii
Unit I	Introduction	1
Unit II	Accumulating an Estate	7
Unit III	Conserving an Estate	15
Unit IV	Wills	21
Unit V	Trusts	28
Unit VI	Problems Affecting Special Groups	34
Tips for Instructors		38
Pointers for Discussion Leaders		39
American Bar Association's Information Opinion A of 1959		41

UNIT I

I. INTRODUCTION

A. The course outlines which follow are for the use and guidance of those who will conduct classes and discussions in "Every Man's Estate Planning -- Now and Future."

The following can be guideposts to effective help for the public in this course:

1. The primary purpose of the course is to acquaint the public with the problems that create the need for estate planning -- not to make the student an expert planner.

2. The course embraces principles and <u>not</u> specific solutions. Specific application of the principles to a student's situation is the proper province of his or her own professional advisers.

3. Each leader or instructor can take comfort in <u>not</u> having to hold forth as expert.

B. What is estate planning?

1. Estate planning is a process whereby a person owning property, attempts

a. To secure the maximum benefits from its possession and use

b. To pass the property to members of his family or friends, with a minimum of shrinkage from unnecessary waste, expenses and taxation

C. Why is estate planning necessary?

1. Estate planning is necessary to familiarize the owner of property with

a. The problems involved in his situation

b. The legal, tax, and financial methods available to him to effectively create, manage, and dispose of his property for the benefit of himself, his family, and other beneficiaries

2. The need for this course has grown out of the awareness on the part of residents of New York State that they have estate planning problems. These problems arise in the areas of property, of taxes, of business, of finance, of investments, and of asset-transmission to other family members.

Some of this awareness has sprung from newspaper and magazine

articles, some from the activity of life underwriters and trust officers, and some from the sheer impact of taxes that has impressed itself on the public consciousness. In turn, this awareness has led the public to seek help in various quarters and with varying results.

Taking this trend into account, it is felt that the time has arrived for introduction of a course in estate planning. Essentially, the course is an exercise in fundamentals. The purpose of the course is to acquaint the students with the problems that may possibly exist in their own situations and then direct them to their advisers to obtain sound legal, trust, accounting, insurance, or investment advice.

D. Who can assist in estate planning?

1. Adequate advice in estate planning can best be obtained from a group or team of advisers. This team of necessity includes a lawyer, and may include a trust officer, a life underwriter, an investment counselor, and an accountant. All provide important services which may be required in the accumulation, management, conservation and distribution of an estate. Which person is contacted first and which one is "captain" of the estate team is immaterial. The experts in the other fields should be brought into the planning as soon as possible.

E. What are the steps in the estate planning process?

1. While the procedures involved in the planning process may vary from one situation to another, there are certain basic steps that should be followed if the property owner is to be placed in a position to make intelligent decisions regarding his property.

These steps are set forth in what might be called a natural planning sequence:

a. Inventory or data-taking

(1) Family information

(a) Names

(b) Address

(c) Relationship

(d) Ages

(e) Marital Status

(2) Listing of assets and liabilities

Assets	Liabilities
Checking accounts	Loans and Notes
Savings accounts	
Savings & loan shares	Mortgages
Investments	
Business interests	Contracts with continuing obligations
Real estate	
Personal life insurance	
Employee benefits	Other substantial indebtedness
Tangible personalty	
Obligations (as creditor)	

(3) Marshalling of all necessary documents

Wills	Financial statements
Trust instruments	Business data
Income tax returns	Life insurance policies
Gift tax returns	Deeds
Investment listings	Other documents

(4) Determination of asset ownership, whether joint or sole name

b. Discussion of estate planning objectives

(1) Estate accumulation

(2) Estate conservation

(3) Flexibility

(4) Coordination

(5) Intangible (the human factors in the family that will take precedence over other factors like tax-savings)

c. Analysis

The following mechanical procedures are necessary to thorough analysis

(1) Examination of assets by type and ownership

(2) Review of life insurance policies

(3) Pricing of securities at current market

(4) Valuation of business interests

(5) Appraisal of real property

(6) Examination of liabilities, including contingent liabilities

d. Examination of problem areas in

(1) Testamentary planning

(a) Liquidity

(b) Life insurance

(c) Marital deduction

(d) Residence

(e) Tangible personalty

(f) Income & principal distribution

(2) Living planning

(a) Disparity between spouses' estates

(b) Marital deduction

(c) Minimizing income and estate taxes

(d) Joint ownership

(3) Business planning

(a) Valuation of business

(b) Business purchase agreement

(c) Ownership control

(d) Successor management

(e) Income for wife

(f) Sale or merger of corporation

(g) Corporate reorganization

(h) Pension and profit-sharing plan

(i) Other employee benefits

e. Estimating

Certain estimates, even though necessarily approximations,

need to be made as a basis for any suggestions for testamentary or living planning. These consist of estimates of

(1) Administration expenses

(2) Federal and New York estate taxes (including use or non-use of marital deduction)*

(3) Present and future gift tax status

(4) Present and future income tax status

f. Pre-administration of the estate as presently planned

This step affords a preview of how a situation would stack up if no more planning were done and is accomplished by

(1) Allocation of specific assets to payment of administration expenses and taxes

(2) Determination of effect of joint ownership on property transmission

(3) Distribution of solely-owned property either by contract, in the case of life insurance, by will, or by the laws of intestacy

The taking of this step affords an excellent background against which to determine what planning moves need to be made.

g. Planning suggestions

It should now be possible to put down in writing specific suggestions for effective planning of a situation. These might be:

(1) Accumulating an Estate -- Unit II

(2) Conserving an Estate -- Unit III

(3) Wills -- Unit IV

(4) Trusts -- Unit V

(5) Problems Affecting Special Groups -- Unit VI

h. Decisions to be made by property owner after due consideration of alternatives suggested by his advisers.

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*See Unit II, Section V, which follows

i. Drafting of necessary documents and review by property owner and advisers

j. Execution of the necessary documents

II. CASE PROBLEM

A. This case problem should be used for discussion purposes in each session.

Mr. Everyman

His Family

Himself	John Everyman	Age 45
His wife	Jeanne Everyman	42
His children	Joan	15
	Jeremy	12
	Jeffery	10

His Estate

1.	Bank accounts (checking and savings)	$ 5,000.
2.	Tangible personal property	5,000.
3.	Real estate (family residence, with title in name of husband and wife as tenants by the entirety, purchased by husband)	20,000.
4.	Life insurance	40,000.
5.	Business or professional interests	20,000.
6.	Investments (stock, bonds and mutual funds)	15,000.
		$105,000.

Comment

An estate that is between $60,000. and $120,000. in value and is owned by a husband whose wife has no estate of her own is one to which special attention should be given. The husband usually desires that the entire estate be available to his wife during the period she survives him, or available to himself if he survives his wife, and that what is left when both have died go to their children. Such an estate can be so arranged that no Federal estate tax will be payable on the death of either the husband or the wife, no matter in which order they die, and at the same time, for all practical purposes the entire estate will be available to the survivors of the husband and wife.

III. INSTRUCTORS SHOULD CONFORM TO THE AMERICAN BAR ASSOCIATION'S INFORMATION OPINION A OF 1959 ON THE UNAUTHORIZED PRACTICE OF LAW. (See page 41)

UNIT II

I. INTRODUCTION

A. Average men during their productive years find it very difficult to accumulate an estate sufficient to accomplish their objectives.

1. Reasons for this condition

a. Reluctance to sacrifice.

b. Temptation to get-rich-quick through speculative schemes.

c. Accumulation by the save-and-create method often shrinks drastically through depreciation, depression, taxation, and inflation.

d. Lack of knowledge and experience.

B. Human life values greatly exceed in importance property values. They are the predominant elements in our national economic wealth. They consist of the factors of personal skill, character, industry and judgment, experience and driving force. Usually regarded as intangible, these human life values can be scientifically treated and made tangible and definite.

C. Few people appreciate the far-reaching economic importance of estate-accumulation vehicles which are important to the objective of replacing earning power in the event of premature death, disability, or old age.

Men can now create and accumulate an estate through many methods such as:

1. Life insurance

2. Savings bank and savings and loan associations

3. Social security

4. Stocks

5. Bonds

6. Pension and profit-sharing plans

7. Real estate

8. Stock options

9. Inheritances

10. Business and professional interests

11. Other types of investments

12. Other types of employee "fringe" benefits

II ACCUMULATING AN ESTATE THROUGH LIFE INSURANCE

Life insurance can solve problems of estate-creation, conservation, distribution and income protection. Sound planning requires care in the selection of proper types of life insurance.

A. Life insurance used in estate-creation:

1. Is a preferential form of property with unique guarantees of performance.

2. Is an inexpensive form of estate-creation.

3. Can be tailor-made to fit needs.

4. Is systematic, certain, and self-completing.

5. Offers flexibility of ownership and control.

6. Can have flexibility in payment of premiums.

B. Life insurance used in estate-conservation:

1. Is a safe investment.

a. Diversified portfolio, professionally-managed

b. Spread risks, based upon actuarial principles

2. Has guaranteed returns.

a. Cash values and other living benefits

b. Death benefits

3. Has flexibility of settlement options and is an effective planning tool.

4. Is exempt from creditors' claims in most instances.

5. Can be used as prime collateral in lieu of less liquid assets.

C. Life insurance used in estate administration:

1. Provides liquidity for administration costs and estate taxes.

2. Provides funds for special needs, such as:

   a. Debts

   b. Specific bequests

   c. Other legal obligations requiring cash

3. The designation of a named beneficiary (other than the estate) can free the proceeds from

   a. New York State estate taxes

   b. Administration expenses

   c. Other transfer costs

4. Provides "cheap dollars" because the face value usually exceeds the total premiums paid.

D. Life insurance used in estate income production:

1. Through settlement options

   a. Guaranteed return of a known amount for a predetermined period*

   b. Income tax advantages

      (1) $1000 interest exclusion

      (2) Exclusions under annuity rules

   c. May provide "spendthrift" protection

2. Through other channels

   a. Securities (Unit II, section III)

   b. Trusts (Unit V)

E. Major types and purposes of life insurance contracts:

1. Whole life

   Multiple-purpose contract which provides protection for the whole of life. It is a combination of protection and investment.

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*The fixed dollar return contains the hazard of reduced purchasing power in an inflationary period.

2. Limited payment plans

These are essentially a straight life plan in which the premium payments are limited to a specific number of years or cease at a given age. The purpose is to complete payments during the most productive years.

3. Endowments

These are also a permanent plan. This type of policy calls not only for the payment of the face value at death, but also for the payment of the face value of the policy at the end of a period of years if the insured is then living. The purpose is to build greater equities for various terminal contingencies.

4. Term plans

These are essentially a specific risk policy for a limited period of time. They build no equity and are strictly for protection. Their purpose is also to allow a person to get started on an insurance program at a lower initial rate when able to assure insurability. They also are used for specific short-term exposures.

F. Some specific uses of life insurance in estate planning

1. Since life insurance is a matter of contract law, and not a matter of estate and probate law (except for estate and testamentary trust designations), life insurance proceeds can be distributed to named beneficiaries for specific purposes outside of the probate distribution.

2. It is a funding vehicle for business needs, such as

a. Deferred compensation

b. Pension and profit-sharing plans

c. Key-man replacement

d. Business purchase agreement

e. Satisfying individual needs

(1) Split-dollar programs

(2) Income continuation

G. HAVE THE CLASS DISCUSS THE TYPE(S) AND AMOUNT OF INSURANCE MR. EVERYMAN MIGHT OR SHOULD HAVE.

III. ACCUMULATING AN ESTATE THROUGH INVESTMENTS

A. The capitalistic system enables individuals to participate in the economic growth and prosperity of the country through ownership of securities. Investment in securities--

1. Involves risk, but also has possible rewards.

2. Requires basic financial planning.

3. Requires careful supervision and attention by professional investment advisers.

B. General types of investment

1. Bonds

a. General characteristics

(1) Fixed contract to pay stipulated rate of interest and repay principal at specific date

(2) Evidence of debt by issuer

(3) Quality directly related to the credit of the issuer

(4) Generally regarded as superior investment due to relatively minimum risk

b. Types listed in order of investment grade

(1) Government

(2) Municipal

(a) Important feature is federal and state tax exemption

(b) General obligation and revenues

(3) Corporate (industrial, utility, railroad)

(a) Convertible bonds

(b) Mortgage and debenture

(c) Others

c. Advantages of bonds

(1) Fixed contract to pay interest and principal

(2) Collateral value

(3) Ability to maintain liquidity

(4) Tax exemption feature available

(5) Relative price stability

d. Disadvanatages of bonds

(1) Poor inflation hedge

(2) Limited marketability

2. Stocks

a. Types

(1) Preferred

(a) Advantages

-1- Has preference as to dividend

-2- May have cumulative feature as to dividends

-3- Has senior claim over common stock in event of liquidation

(b) Disadvantages

-1- Does not have any maturity

-2- Does not share in growth of company

-3- Does not generally have any voting rights

(2) Common

(a) Advantages

-1- Ability to share in growth of company

-2- Limited liability of person owning common stock

-3- Good income with possibility of increase

-4- Relatively good marketability

-5- Value as collateral

-6- Ability to accumulate on systematic basis

(b) Disadvantages

-1- High degree of risk

-2- Individual responsibility for supervision

3. Investment trust (mutual funds)

a. Types

(1) Real estate

(2) Open-end

(3) Closed-end

b. Advantages

(1) Paid management to supervise holdings

(2) Good marketability

(3) Ability to accumulate on systematic basis

(4) Provides diversification

c. Disadvantages

(1) Commission rates

(2) Degree of risk

(3) Moderate growth

C. Accumulating an estate through current savings and private investments

1. Advantages

a. Supplements current income.

b. Provides equity dollars as an inflationary hedge.

c. Allows diversification.

d. Meets current needs.

e. Affords opportunities for profit and trading advantages.

f. Permits use of systematic investments.

g. Makes possible some tax-exempt income.

h. Offers growth through common stocks and convertible securities.

i. Provides liquidity.

2. Disadvantages

a. Takes time and is uncertain

b. Contains hazards of premature death, disability, or living too long.

c. Exposes family to risks inherent in investing.

d. Is possible only out of spendable income, after living costs and taxes.

e. Is limited by individual's temptation to purchase material possessions.

f. May not satisfy terminal needs.

D. HAVE THE CLASS DISCUSS THE TYPES OF INVESTMENTS MR. EVERYMAN MIGHT OR SHOULD HAVE.

IV. INSTRUCTORS SHOULD CONFORM TO THE AMERICAN BAR ASSOCIATION'S INFORMATION OPINION A OF 1959 ON THE UNAUTHORIZED PRACTICE OF LAW. (See page 41)

UNIT III

I. ESTIMATING THE ESTATE

A. Reasons for estimating the estate

1. Determine estate tax bracket; compare with gift taxes

2. Determine cash requirements

a. Taxes, due dates, etc.

b. Administrative expenses

(1) Executor's fees

(2) Attorney's fees

(3) Funeral expenses

(4) Court costs, appraisals, etc.

c. Last illness expense

d. Immediate family needs

e. Debts

3. Determine the liquidity of the estate

a. Bank accounts

b. Life insurance policies

c. Stocks, bonds, mortgages, etc.

d. Business interests

e. Real estate

4. Highlighting special problems

a. Title and ownership

b. Other problems

B. How to estimate the estate

1. Use of worksheet (supplied in kit)

a. Discussion of assets, with examples

b. Discussion of liabilities, with examples

c. Discussion as to degree of accuracy required

Values are relative and changing. Reasonable approximations will suffice at this point. Exact figures can be used if available. Wild guesses may distort the results.

II. ESTATE TAXES

A. Federal and New York State estate taxes are taxes paid by the estate for the privilege of transferring property after death. There is no Federal or New York State tax to be paid for inheriting property. Some other jurisdictions have inheritance taxes.

1. Examples of estate taxes. (Rates and schedules supplied in kit)

*Net taxable estate	Federal tax	*Net taxable estate	New York estate tax
$ 5,000.	$ 150.	$ 5,000.	$ 100.
25,000.	2,300.	25,000.	500.
100,000.	20,700.	100,000.	2,500.
1,000,000.	325,700.	1,000,000.	54,000.

2. Specific exemptions

a. Federal - $60,000

b. New York State

(1) Wife

(2) Children

(3) Life insurance

3. Marital deduction** is the smaller of

a. The amount of property left outright to the surviving spouse, or

b. 50% of the adjusted gross estate

*The "net taxable estate" is generally not the same base figue for Federal and New York estate tax purposes: e.g. a $130,000 estate (less Federal marital deduction (1/2) and specific exemption - $60,000) equals a net taxable estate of $5,000; but the same $130,000 estate (less N.Y. marital deduction (1/2), 4 exemptions for children @ $5,000 each and an insurance exemption of $20,000 - would equal a net taxable estate of $25,000. for New York estate tax purposes.

**See section V, The marital deduction, which follows.

4. Charitable deductions

5. Credits against tax. (Previously taxed property, foreign property, etc.)

III. TAXABLE ESTATE

A. The taxable estate is the gross estate - less liabilities, exemptions, and specific deductions.

1. Includable items

Real estate
Stocks
Bonds
Mortgages, notes, and cash
Insurance proceeds
Joint tenancy property
Miscellaneous other properties: such as business interests, income accrued since death, household goods, personal effects, employee death benefits, etc.
Properties transferred in contemplation of death.

2. Non-includable items

a. Benefits under qualified employee plans

b. Beneficiary-owned life insurance

c. Limited interests. (Life tenants and trust beneficiaries)

B. Valuation problems of other includable items

1. Unlisted interests

2. Contracts

3. Goodwill

C. Available options

1. Valuations at date of death or one year later

2. Deductibility of funeral and administrative expenses. (From estate taxes or income taxes)

IV. APPLICATION OF TAX RATES TO

A. Death of one spouse

B. Subsequent death of remaining spouse

C. Reverse order of deaths

V. MARITAL DEDUCTION (FOR CONVENIENCE OF DISCUSSION, THE ASSUMPTION IS MADE THAT THE HUSBAND OWNS MOST OF THE PROPERTY AND WILL BE THE FIRST OF THE SPOUSES TO DIE).

A. What is it?

Where both spouses are living, the Revenue Code permits the husband to pass--free of estate tax--one-half of his adjusted gross estate to his wife. Thus, one-half of his estate will be subject to estate taxes when he dies; the other half, along with her own assets, will be subject to her estate tax when she dies.

By the use of marital deduction, a large estate can thus be converted into two smaller estates with a corresponding reduction in the applicable estate tax brackets.

B. To whom available?

To either spouse where both are now living, but of no practical benefit where the taxable estate of such spouse is less than $60,000.

C. How to qualify property for the deduction?

The wife must be given "control" through any one or more of the following means

1. By outright distribution in the will; or

2. By joint ownership where she is the other joint tenant; or

3. By outright distribution to the wife under a contract (such as life insurance, pension trust or profit-sharing plan, etc.) or

4. By a qualified "marital trust" with

a. The following two <u>mandatory</u> features

(1) Income payable at least annually to her for life and

(2) General power of appointment, i.e., her power to distribute the property to whomever she wishes by her will.

b. The following are <u>optional</u> with the husband

(1) Wife's power to use principal; or

(2) Trustee's power to use principal for her benefit; or

(3) Power in each

c. The husband can provide for the merger of a marital trust with a trust covering the other half, if her power of appointment is not exercised.

5. "Accumulation" or "Estate" trust

a. Mandatory accumulation of income during the wife's lifetime, and

b. Mandatory payment of principal corpus and accumulations to her estate

6. A life estate that meets the requirements outlined in 4 above

D. Advantages in the maximum use of marital deduction.

1. Since the Federal estate tax is progressive, this estate-splitting through use of the marital deduction becomes worthwhile. The Federal estate tax starts off at a low 3%, goes up very fast, tapers off and ends at 77%. Whatever is taken off the top of the husband's estate will be taxed in his wife's estate at a lower rate. In addition, each estate has a $60,000 exemption, and with this estate-splitting, there is full use of two exemptions.

Some examples (using husband's estate)
(Not reflecting credit for State estate taxes)

Adjusted Gross Estate	Tax Without Mar. Deduc.	Tax With Max. Mar. Deduc.	Tax Savings
$ 60,000	-0-	-0-	-0-
$120,000	$ 9,500	-0-	$ 9,500
$240,000	$ 44,700	$ 9,500	$35,200
$480,000	$120,100	$44,700	$75,400

2. The resulting tax-savings make more of husband's property available to his wife after his death.

3. The use of a "residuary trust" on the non-marital part of the husband's estate makes it possible to pass to the children this portion free of estate-tax at his wife's death.

4. Use of principal from marital deduction trust gives surviving wife an opportunity to increase the estate-tax-free funds that the children will ultimately receive from the residuary.

E. Some observations regarding the marital deduction.

1. Care should be taken not to "over-qualify" the husband's estate, (e.g., $150,000.00 left outright to wife; husband's estate qualifies, but wife's estate suffers extra tax burden).

2. No matter how the marital deduction is used, provision should be made for simultaneous death from disaster, to insure marital deduction husband's estate.

3. Not all "assets" qualify for marital deduction use. Care must be taken in selection and treatment of each asset.

4. Provision should be made for payment of estate taxes from residuary share to insure full marital deduction.

5. Wife's assets must be considered to determine whether part or all of marital deduction should be used. (Consideration of estate taxes on wife's death without marital deduction).

6. Family needs (i.e. education, spendthrift spouse, invalid child) must be considered and should take priority.

CAVEAT

THIS IS A VERY TECHNICAL PART OF ESTATE PLANNING, WHICH CANNOT BE DEALT WITH SUMMARILY. CAREFUL CONSIDERATION MUST BE GIVEN TO ALL CIRCUMSTANCES - INDIVIDUALLY EVALUATED - AND THE RESULT MUST BE CUSTOM PLANNED FOR EACH INDIVIDUAL.

VI. HAVE THE CLASS DISCUSS HOW MR. EVERYMAN'S ESTATE COULD BE CONSERVED THROUGH PROPER PLANNING.

VII. INSTRUCTORS SHOULD CONFORM TO THE AMERICAN BAR ASSOCIATION'S INFORMATION OPINION A OF 1959 ON THE UNAUTHORIZED PRACTICE OF LAW. (See page 41)

UNIT IV

I. WILLS - THE LEGAL REQUIREMENTS

A. What is a last will and testament?

1. A will is a written instrument executed with the formalities of law, whereby a person makes a disposition of his property to take effect after his death. (Black's Law Dictionary)

2. The right or privilege to make a will is given by law. It is a privilege which is unfortunately often overlooked and lost by default.

3. A will is ambulatory - it speaks or takes effect only at the death of the maker. It may be changed at any time during his life. It governs the disposition of property acquired after the will has been executed.

B. Why should you have a will?

1. Your property will then go to the persons named and in the amounts that you desire. If you fail to make a will, the law arbitrarily distributes your property. Seldom does this latter distribution coincide with your wishes.

2. It may save you (your estate) money by reducing expenses. The smaller your estate is, the more important this saving is. These savings by a will result from the following factors:

   a. Property can often be sold, distributed or handled without the expense of asking a court for authority.

   b. Estate or inheritance taxes may be reduced or minimized.

   c. The cost of a bond covering the person or persons who will have the duty of administering your estate can be avoided. The cost of having a will drawn is often less than the annual premium on such a bond.

   d. Broad powers to deal with specific property can be given by will, so that a business may be operated or concluded, or real estate may be sold without losses.

3. You may appoint the person you wish to handle your estate (your executor). This alone is a good reason for having a will.

II. WHAT HAPPENS IF YOU LEAVE NO WILL?

A. Your property passes arbitrarily in accordance with the descent and distribution established by law, (Dec. Est. Law, Sec. 83), rather than by your planned distribution. (See the table prepared from Sec. 83

of Decedent Law in the student's kit).

B. Your estate, instead of being managed by the person you designate (the executor named in your will), will be managed by an administrator (normally your closest relative), appointed by the surrogate of the county by letters of administration.

1. Frequently disputes (which must be resolved by the court) arise over the right to letters of administration between persons equally entitled to be named. A will would avoid this.

2. The administrator generally must be bonded and your estate must pay the bond premium. (By will you can provide that your executor need not be bonded).

3. The administrator is strictly limited by law as to what he can or can not do. In general, he may only liquidate your assets, pay your debts and distribute the proceeds. He has only limited authority to deal with real property, your business or other property - and then only after court approval which often means additional expenses and delay to your estate. All this can be avoided by a will giving suitable powers to your executor.

III. WHO CAN MAKE A WILL?

A. In New York State, a person 18 years of age or older may make a will disposing of real and personal property. (Dec. Est. Law, Sec. 15).

B. To make a will you must have testamentary capacity, i.e., your mental capacity must be sufficient to meet all of the following: (Dec. Est. Law. Section 15).

1. You knew you were making a will

2. You knew the nature and extent of your property.

3. You knew (whether you left them anything or not) the persons who would be the natural objects of your bounty (in short, your dependents, your family).

4. You were acting freely under no duress or coercion.

C. Aliens have the right to make wills, with some technical requirements.

IV. WHERE DO YOU EXECUTE YOUR WILL?

A. Your will should be prepared and executed in the state where you live. There is no federal law of wills - each state has its own laws and the important thing is to have your will accepted in the

state where you are domiciled when you die.

B. Change of residence does not invalidate a will. Most states will give your will effect if it is executed, or in accordance with the laws of the state where it was executed, or in accordance with the laws of the domicile of the maker at the time. (Dec. Est. Law, 220a, 23). This highlights the need to have your will reviewed when moving from state to state.

V. HOW DO YOU EXECUTE YOUR WILL IN NEW YORK? (DEC. EST. LAW, SEC. 22, 27).

A. You must have two witnesses (three are preferable).

B. The witnesses must not be persons who are to benefit under the will

C. Your will must be <u>in writing</u>.

1. Exceptions are made for persons in actual military or naval service, or for a mariner while at sea. (Surr. Ct. Act., Sec. 141).

D. You <u>must sign</u> your will. (Dec. Est. Law, Sec. 21, 22, 27).

E. The following legal requirements must be met before you sign your will:

1. The testator must announce clearly to each witness that the document is the testator's will. The witnesses do not have to read the will.

2. Each witness must be asked and must assent to acting as a witness.

3. The testator signs the will in the presence of the witnesses or else the testator must acknowledge his subscription to each witness. Then each witness signs the will at the request of the testator. Each witness must indicate his address, or be subject to a small fine.

VI. HOW DO YOU REVOKE YOUR WILL? (DEC. EST. LAW, SEC. 34).

A. You may revoke your will by writing a new will of a later date.

B. You may actually destroy your will, or you may write on or deface your will, or indicate in other manner thereon your intention to cancel it.

VII. WHERE SHOULD YOU KEEP YOUR WILL?

A. You may leave it with your attorney.

B. If your executor is a bank or a trust company, they will offer to keep it.

C. Otherwise keep it in a safe-deposit box, but preferably one to which a person other than yourself has access. (After your death your personal safe-deposit box cannot be opened without court authorization).

D. The Surrogate's Court of any county in New York will receive a will for safekeeping free of charge, or for a small fee.

E. Wherever you keep your will, retain a copy for purposes of reference and review, with a notice as to where the original is stored.

VIII. HOW WILL YOUR ESTATE BE ADMINISTERED IF YOU LEAVE A WILL?

A. Your will must be admitted to probate by the Surrogate's Court of the county. This gives the will legal effect. These procedures are a guarantee to you that no forged or specious document will be accepted as your will.

B. After your will is admitted to probate, the executor you named will qualify to act as such by filing his oath (and a bond, where that is required by the will or the court).

C. Your executor will then proceed to administer your estate in accordance with the instructions in your will. He will have the powers you give him and he will have the duty to follow your testamentary directions. In general, your executor will collect your assets, pay your debts, funeral and medical expenses, taxes, and finally distribute your estate to the persons you designated. Lastly your executor will account to the beneficiaries and to the court for every action he has taken. As your executor is a fiduciary, he will be held personally responsible for all his actions by the court until finally discharged. From the foregoing brief description it may be clearly seen that:

1. It is important that the person named as executor be an experienced person or institution and be able to take the place of the testator and carry out his wishes. The executor should therefore be chosen with care and preferably be one well acquainted with the affairs and business of the testator and have the necessary background to do the job properly.

2. The executor should be given sufficiently broad powers to meet any foreseeable contingency based on the type of estate he is being called upon to administer. Brief consideration will indicate that this may require powers to be given to the executor for the management of a going business, real estate, investments and numerous other items of property.

IX. WHAT YOU MAY NOT INCLUDE IN A WILL.

A. Certain property does not pass by will due to the nature of the property, or the way it is owned or held.

1. Joint property with right of survivorship.

Persons sometimes feel that if they put all their property in joint ownership all their problems are solved. This is not the case. Contrary to a widely held belief, even if you die first, joint ownership will not save any estate taxes. Anthing that can be done by way of joint ownership, be it real property, a bank account or anything else, can be better accomplished by a will; and what is most important, you, the owner, have not parted with any part of the property or its control.

2. U.S. Savings Bonds held in the name of one person payable on death to someone else is another example of property that does not pass by will.

3. Insurance is usually payable to named beneficiaries (other than the estate). An insurance policy is a contract and you cannot change beneficiaries by your will.

B. Certain property is exempt by law for the benefit of the family and hence does not pass by will.

1. In New York, certain property is set off by law for the surviving spouse or infant children and does not pass by will - this consists of up to $1,000 in cash and other personal property specified by statute (Surrogate's Court Act, Sec. 200).

C. More important than the foregoing is the so-called "right of election of the surviving spouse" (Section 18, Dec. Est. Law). This law is intricate and only a brief discussion is possible here. A surviving spouse may have a right to elect to take against the will of the dead spouse. Basically a surviving spouse is entitled to take as a minimum, the amount he or she would take if the deceased spouse had died intestate, but in no event more than one-half of the net estate, both real and personal.

D. Other limitations should be considered.

1. You may "disinherit" your children (even though, as above discussed you cannot disinherit your wife or husband).

2. Limitation on charitable gifts. If you leave a spouse, child, parent or descendant surviving, then you may leave only one-half of your net estate to charity. Any excess charitable bequests will be declared invalid and will pass as in intestacy or under other pertinent provisions of the will, if such child

or other person elects to object to the gift of the excess. (Dec. Est. Law, Sec. 17).

X. WHAT YOU MAY INCLUDE IN A WILL.

A. Subject to the limitations already discussed, any type of property you own may be disposed of by will.

1. Tangible personal property. This includes furniture, fixtures, personal effects, china, linen, silverware, stamp collections, boats, etc.

2. Residence and other real estate

3. Business and professional interests

4. Intangible personal property. This includes stocks, bonds, etc.

B. Testamentary trusts

1. You may create a trust in your will to take effect on your death.

2. The general subject of trusts is treated in Unit V.

C. Powers of Appointment - You may have the right to dispose of property left by someone else, in his will or trust agreement, for you to manage.

D. Non-dispository provisions:

1. Payment of estate taxes - New York law apportions taxes equally among beneficiaries. This is not the cheapest way of doing things. You can and should make provisions to the contrary.

2. Common disaster provisions - In the absence of a provision in your will, the law makes certain presumptions in the event of a common disaster. These can be overcome by your own special provisions.

3. Provision for the payment to minors or others who may be under a legal, physical or mental disability.

4. Powers may be granted to your executor and trustee to permit them to act with a degree of flexibility - as you would in managing your own affairs - rather than be bound by the rather strict provisions of the law.

5. Formal provisions. There are many clauses which are "standard" such as: introductory clauses, revocation of prior wills, payment of debts, etc.

XI. A FEW THINGS YOU SHOULD REMEMBER

A. A will is always revocable. It can be revoked by a new will, or by destroying the will with the intent to revoke.

B. A will may be amended or altered in part by a codicil, but the codicil must be executed with the same care and the same formalities as to witnesses as the original will. A will cannot be in any way amended by deletions, changes or interlineations made in it by the testator. These will not be given effect and the whole will may be invalidated.

C. There are testamentary formalities. It has been pointed out above that a will must be executed in strict accordance with certain rules and that changes must be done with the same formalities.

D. After you have made your will, don't forget about it.

1. Review your will periodically - in the light of changing conditions as to your property, family domicile, and your desires.

2. Your will is the "keystone" to your estate plan. It must be integrated with other provisions which you make for your property, to effectively carry out <u>your</u> estate plan.

XII. HAVE THE CLASS DISCUSS THE TYPE OF WILL MR. EVERYMAN MIGHT OR SHOULD HAVE.

XIII. INSTRUCTORS SHOULD CONFORM TO THE AMERICAN BAR ASSOCIATION'S INFORMATION OPINION A OF 1959 ON THE UNAUTHORIZED PRACTICE OF LAW (See page 41)

UNIT V

I. COMPONENT ELEMENTS OF A TRUST

A. Property Owner (variously called Grantor, Settlor or Trustor in the case of a living trust; or Testator in the case of a will)-- with an express intention to create a trust.

B. Principal (variously called "res" or "corpus")-- may be almost any of property, personal or real, to be placed in the trust.

C. Trustee -- may be either an individual and/or a group of individuals and/or a corporate fiduciary.

D. Beneficiary -- may be any individual, or group of individuals, or a charitable, religious or educational organization, who are to benefit from the income and/or principal.

E. Purpose -- must be valid and legal (our discussion will be confined to voluntary trusts, as opposed to constructive trusts or statutory trusts: e.g., those involved in bankruptcy proceedings).

F. Written Agreement -- complete provisions of the trust must be in writing.

II. HOW TO DISTINGUISH TRUSTS BY THEIR FEATURES

A. By "split title" to ownership of the trust's assets

1. "Legal" title in trustee

2. "Beneficial" title in beneficiary

B. By its commencement date

1. At present -- living trust

2. At death -- testamentary trust

C. By its duration

1. For one lifetime -- marital trust

2. While any family member is living -- flexible family trust

3. During minority of the children -- minority "pool" trust

4. For a term of years -- short-term trust

5. In perpetuity -- charitable (trust) foundation

D. By funding (e.g., adding cash or securities to the trust)

E. By lack of funding (e.g., life insurance policies only)

F. By degree of control

1. Retained by grantor -- revocable trust

2. Placed in third party or parties -- irrevocable trust

G. By degree of trustee's discretion over income

1. No discretion (income paid at regular intervals to specified beneficiary or beneficiaries with no accumulation of income.)

2. Discretion as among multiple beneficiaries (Income can be paid to a child even while the wife is living.)

3. Discretionary accumulation of income (if outside sources of income or other sources of income make it wise to do so.)

4. No discretion - compulsory accumulation of income

H. By degree of trustee's discretion over distribution of principal

1. No discretion to pay out principal (rarely recommended because of possible future needs)

2. Discretionary distribution (if certain standards are met to trustee's satisfaction)

a. For general support, welfare, and maintenance of the beneficiary

b. For emergency, illness of the beneficiary

c. For children's education

d. After consideration of beneficiary's other income sources (e.g., exhaustion of marital share first)

e. For some special purpose

(1) Helping a son to establish a business or profession

(2) Helping a daughter purchase a home

3. Sole discretion

a. <u>Without</u> any standards to be met before distribution of principal by trustee

b. <u>With</u> priority as to needs (e.g., wife's needs to take priority over child's needs)

c. Without any standards, but with precatory words expressed in trust instrument as a guide to the trustee

I. By degree of beneficiary's own control over principal

1. Privilege of withdrawal limited

a. As to amount (e.g., up to 5% or $5,000 per year, in order to preserve estate-tax advantages)

b. As to attainment of ages (e.g., after 25 and before 30, after 30 and before 35, after 35 and before 40)

2. Unlimited privilege of withdrawal

a. After attainment of an age (e.g., after 35)

b. At any time

3. Automatic payments of principal to beneficiary (usually in the case of children)

a. For specified fractions

b. At specified ages

J. By identity of the trust beneficiaries

1. Wife alone

2. Family group

3. Children through minority and/or educational periods

4. Charitable, religious, or educational organization

K. By time of transfer of property to trust

1. Present transfer of legal title with beneficial ownership reserved to grantor (e.g., a living revocable trust)

2. Present transfer of legal title to trustee with no rights or privileges reserved to grantor (i.e. irrevocable trust)

3. Transfer of legal title from executor to trustee after property owner's death (e.g., under a will)

4. Present transfer of legal title to trustee with automatic reversion to property owner at end of stated period (short-term trust)

III SOME SPECIFIC FUNCTIONS OF A TRUST

A. To provide professional, humane management for a family after the property owner's death

B. To handle personal affairs if property owner becomes incapacitated

C. To channel property distribution only to the immediate family to the exclusion of

1. A second spouse (due to re-marriage of surviving widow or widower)

2. A son-in-law

3. A daughter-in-law

4. Wife's relatives

5. Husband's relatives

6. Any "objectionable" relatives

D. To lessen an income-tax burden by shifting educational funds or support obligations to a lower-bracket taxpayer

E. To keep a family business intact until sound decisions can be made as to sale or continuation of the business

1. To effect prompt and efficient transfer of business interests and life insurance proceeds through use of a trustee

F. To build up a reservoir for payment of taxes, administration expenses, etc.

G. To take care of an invalid or incapacitated family member

H. To pool funds for taking direct care of minor children if both parents are deceased

I. To avoid guardianship expense for grandchildren until they attain legal majority

J. To insure growth of capital, or accomplishment of other investment objectives

K. To reserve income to property-owner during lifetime, but to make a present irrevocable, ear-marking of principal for payment to charity at death of property owner

L. To put into operation a separate entity (e.g., a family foundation)

1. Take care of current annual charitable giving

2. Distribute to charity the remainder of an estate after all of the individual beneficiaries have been taken care of

B. Accurate systematic record-keeping by the trustee is required by law.

C. Property owner has opportunity to observe his over-all planning in action while living if he coordinates a living trust with his will.

D. A trust eliminates

1. Delays that are present where probate requirements must first be met under a will.

2. Controversy where a will is contested by disgruntled beneficiaries.

E. Privacy as to family affairs is possible to a greater degree than in the case of a will, which is a matter of public record.

F. A trust permits transmission of property in a modern, economical fashion that can reduce probate expense, executor's commissions, and attorney's fees.

G. Location (situs) of management can be permanently fixed regardless of property owner's future domicile change.

V. DISADVANTAGES OF A TRUST

A. Lack of control by beneficiaries

B. Lack of control by a grantor in the case of an irrevocable living trust

VI. ANNUAL COST OF TRUSTS

A. The trustee's commissions are usually computed annually by the trustee on the basis of the market value of the trust assets on each anniversary of the trust, commencing with the first.

B. Computation basis

1. In the case of a testamentary trust, trustee's commissions are fixed by the laws of the State of New York.

2. In the case of a living (or present) trust, trustee's commissions are a matter of agreement between the property-owner and the trustee. In most cases the statutory fees are adhered to. Generally, some part or all of the trustee's commission is

deductible for income tax purposes. Naturally, this is subject to any future change in our tax laws.

VII. SOURCES OF TAX SAVINGS

A. Income tax savings can be accomplished by

1. A short-term trust

2. An irrevocable living trust for beneficiaries other than the grantor

3. Discretionary accumulation of income in a residuary trust, coupled with spending of income and estate-taxable principal in a marital trust

4. A charitable trust (e.g., a family foundation as a receptacle for annual giving)

5. A reserved-income trust with a charitable payee as to principal

B. Estate tax savings can be accomplished by

1. An irrevocable living trust for beneficiaries other than the grantor.

2. A testamentary trust with limitations on the beneficiary's control.

3. A charitable trust.

C. Gift tax savings can be accomplished by

1. A "minority" trust created under the revenue code provisions.

2. An irrevocable living trust where the lifetime exemptions have <u>not</u> been used.

VIII HAVE THE CLASS DISCUSS THE TYPES OF TRUSTS MR. EVERYMAN MIGHT OR SHOULD CREATE.

IX. INSTRUCTORS SHOULD CONFORM TO THE AMERICAN BAR ASSOCIATION'S INFORMATION OPINION A OF 1959 ON THE UNAUTHORIZED PRACTICE OF LAW (See page 41.)

UNIT VI*

I. PROBLEMS AFFECTING BUSINESS OWNERS

A. Business interests (including farmers)

1. Sole proprietorship

2. Partnership (joint-venture)

3. Family (closely-held) corporation

B. The major decision to be reached before the businessman's death is whether the business interest is such that it can be continued after death or must be liquidated. Factors involved in reaching this decision are:

1. Is the business owner's personal service required?

2. Has a "good-will" factor been built up?

3. Can the family provide management ability?

4. If not, can the business afford hired management?

5. Could the business be sold and the proceeds invested so that a more substantial return might be realized?

6. What are the future prospects of the business?

7. Can the family afford the inherent risks of the business?

8. Can the wife perform services to justify a salary in the light of IRS restrictions?

C. Assuming the decision has been reached that the business can be continued by the family, the following areas of business planning must be considered.

1. Requirements for cash

a. Estate taxes

b. Working capital for added costs incurred during transitional period

(1) Training management of successor

(2) Temporary decrease in sales

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*This may well be taught by a panel of consultants.

(3) Immediate pay-off of bank loans

2. Planning to provide, or reduce needs for cash

a. Life insurance owned by business

b. Gifts of interest in business

c. Use of classes of stock in closely-held corporation

(1) For gifts during lifetime, without surrendering control

(2) For bequests to charities after death

(3) To family foundations

d. Fix values by buy-and-sell agreements

(1) An agreement whereby a business owner's entire interest is purchased from his estate

(2) Fixing of value for estate tax purposes eliminating controversy with taxing authorities

e. Pension or profit-sharing plans to buttress the basic financial position of the family

3. Planning for continued management

a. Specific provisions in a will directing continuance, allowing discretionary continuance

b. Special powers should be given to executor and trustee

c. Bringing employees into management

D. Assuming the decision has been reached that the business must be sold or liquidated, the following areas of business planning must be considered.

1. Interim operation

a. Specific provisions in the will directing the liquidation or sale of the business

b. Special powers for executor to provide orderly disposition

c. Interim cash requirements

2. Problem in disposition of business by types

a. Selling the sole proprietorship

(1) How to reach the potential buyer?

(a) Contact suppliers and distributors

(b) Employees and associates

(c) Business brokers, trade publications, banks

(2) Preparation of business for orderly transfer

(a) Separation of multiple business activities

(b) Possibility of incorporation

b. Selling the partnership interest

(1) Sale of partnership interest to surviving partners vs. dissolution and liquidation of partnership

c. Selling a corporate interest, using a buy-sell agreement

(1) Will the interest be bought by stockholders (a cross-purchase agreement) or by the corporation (a stock-redemption agreement)?

(a) Available surplus'

(b) Attribution rules (Internal Revenue Code)

(2) Is the purchase obligatory?

(3) Factors involving price determination

(a) Valuation of business

(b) Future prospects of the business

(c) Percentage of ownership

(4) Terms of payment

(a) Cash

(b) Installments

(c) Security for future performance of terms

(5) Funding

(a) Life insurance - (proceeds are tax-free)

(b) Corporate cash position

(c) Corporate cash flow

II. PROBLEMS AFFECTING THE EMPLOYEE ESTATE

A. What benefits are available to his estate

1. Options under pension or profit-sharing plan

2. Insurance

a. Personal life insurance

b. Group life insurance

3. Stock options and stock bonus plans

4. Deferred compensation arrangements

B. Planning to reduce death taxes

1. Coordination of employee benefits with personal assets

C. Planning to reduce income taxes

1. Capital gains vs. normal income tax

D. Social security benefits

III DISCUSS THE SPECIAL PROBLEMS MR. EVERYMAN MIGHT OR SHOULD CONSIDER IN HIS ESTATE PLANNING.

IV. INSTRUCTORS SHOULD CONFORM TO THE AMERICAN BAR ASSOCIATION'S INFORMATION OPINION A OF 1959 ON THE UNAUTHORIZED PRACTICE OF LAW. (See page 41.)

Tips for Instructors

1. Sell yourself to your group; acquire their confidence.

2. Sell your group thoroughly on the benefits to be derived from this course. Be sure you know the objectives of the course and be certain they are achieved.

3. Keep the atmosphere informal.

4. Avoid the use of such words as: "class, teacher, classroom, students" etc.

5. Be casual and at ease.

6. Work problems out together.

7. Use all the teaching aids you can borrow or contrive:

   Forms Mimeographed Outlines Charts Motion pictures

8. When you criticize (only if necessary) smile.

9. The discussion method is usually better than the lecture method. Always allow for discussion.

10. Encourage participants to ask questions.

11. Don't let any one participant take too much time.

12. Allow a 5 or 10 minute break or rest period at the end of each hour.

13. Start on time. Stop on time.

14. Explain both sides fairly.

15. Remember that you are dealing with a group that is attending voluntarily and cannot be classified as a "captive" audience. Your delivery and use of simple language will determine whether you are reaching each person and inducing him to return again. If you must use technical language, explain it.

16. Above all, do not answer specific personal questions. Keep all questions hypothetical and concerned with Mr. Everyman. Advise students to obtain answers to their personal questions from their own advisers.

17. Give opinions or answers to questions only in your own field of endeavor.

18. All instructors should conform to the American Bar Association's Information Opinion A of 1959 on the unauthorized practice of law. See page 41 of this publication.

Pointers for Discussion Leaders

I. Prepare the lesson.

A. Determine what is to be presented.

B. Organize your lesson; outline it.

C. Decide the best method of presentation.

D. Plan suitable visual aids: charts, graphs, slides, films and pamphlets.

E. Reduce your plans to writing:

List aids and needed equipment.

Title
A.----------
1.-------
2.-------
B.----------
1.-------

II. Prepare yourself.

A. Rehearse your presentation.

B. Time your presentation. It is suggested that you reserve one-half your time for discussion and questions.

C. Attempt to anticipate questions that may be asked.

III. Prepare the room.

A. Check list of materials and aids you plan to use.

B. Check operation of any required equipment.

C. Check room facilities: chalkboard, chalk, erasers, lights.

IV. Prepare your class. Introduce yourself; make a few introductory remarks.

V. Miscellaneous

A. Emphasize and summarize important points.

B. Announce each topic you present; summarize afterwards.

C. When talking, face the class not the chalkboard.

D. Insist that students identify themselves when asking questions.

E. Ask that elaborate questions be rephrased into shorter ones.

F. Do not permit questions until end of lecture period.

G. Permit only one question or problem at a time. Carry each problem through to a conclusion before accepting the next question.

INFORMATIVE OPINION A OF 1959
August 1959

Committee on Unauthorized Practice of Law
American Bar Association

ESTATE PLANNING

This Committee has received inquiries concerning the propriety of the conduct of corporations and individuals who are not lawyers but who, through advertisements, brochures, orally or otherwise, solicit legal work or hold themselves out to the public as being available to give legal assistance in the field of estate planning or to do the whole job of planning an estate.

The phrase "estate planning" has come into existence in recent years to refer to the orderly arrangement of an individual's assets so as to provide most effectively for the economic needs of himself while living and of those dependent upon him after his death. At the outset it should be recognized that there are certain lay activities which are legitimate aspects of estate planning and which do not involve legal work, but which are in the nature of an analysis of the facts and assets of an estate in relation to economic needs, and may extend to giving general information as to laws affecting the disposition of estates, though without any specific application thereof to a particular estate or individual situation. These activities may be properly performed by persons who are not lawyers, and are discussed later in this opinion. In general, however, pursued to its proper conclusion, estate planning necessarily involves the application of legal principles of the law of wills and decedents' estates, the law of trusts and future interests, the law of real and personal property, the law of taxation, practice in the Probate and Chancery Courts, or other fields of law. When such is the case, the work involved in estate planning includes legal research, the giving of legal advice, or the drafting of legal instruments.

There can thus be no question that estate planning, except where it is in the nature of an analysis of the facts and assets of an estate as above described, involves legal work and constitutes the practice of law. When engaged in by an individual who is not a lawyer, or by a corporation, it is the unauthorized practice of law. Nor does it become any the less the practice of law because the suggestion is made that the legal advice given or legal work done should be reviewed by an attorney. It is well settled that both corporations and laymen are prohibited from practicing law directly, and that they may not practice law indirectly by hiring lawyers to practice law for them. Accordingly, neither corporations nor laymen may engage in estate planning by soliciting the legal work involved and then hiring lawyers to perform it. This is also the unauthorized practice of law. In addition, under Canon 47 of the Canons of Professional Ethics of the American Bar Association no lawyer shall permit his professional services, or his name, to be used in aid of, or to make possible, the unauthorized practice of law by any lay agency, personal or corporate.

It is elementary that under Canon 27 lawyers are forbidden to solicit legal employment by circulars, advertisements, or otherwise. Thus, no lawyer may solicit legal work in the field of estate planning or be employed to do such work for a corporation or a layman which does. But the public could not be protected by prohibiting the lawyer from soliciting legal work in the field of estate planning, if at the same time laymen and lay agencies were permitted, in any guise, to advertise a claimed legal competence in this field. It should be clear, therefore, that the holding out by any lay agency to the public, directly or indirectly, overtly or subtly, of its willingness to perform legal services in the field of estate planning is itself the unauthorized practice of law. Also, no lay agency may hold itself out to the public as willing to do the whole job of "estate planning" without becoming engaged in the unauthorized practice of law.

In addition, the lawyer-client relationship requires a duty of absolute loyalty to the client, and undivided allegiance. Under Canons 6 and 35 of the Canons of Professional Ethics, the lawyer cannot permit his professional services to be controlled or exploited by a lay agency intervening between him and his client.

Also, under Canon 34 lawyers may not divide fees with laymen, and this principle applies to fees for legal work in the field of estate planning. Moreover, the sharing by a layman of a lawyer's fees constitutes the unauthorized practice of law.

Illustrative of the treatment of the subject in the Courts is the decision of the Superior Court of Cook County, Illinois, in Chicago Bar Association vs. Financial Planning, Inc.*, decided March 21, 1958, in which the court held that certain estate planning services involved the giving of "legal advice on some of the most important problems which can arise during a man's lifetime and after his death", adding that "Even if this advice were confined to tax savings alone, it still would amount to the practice of law"--- and "the contention that the advice is comprised merely of suggestions, and is always subject to be reviewed by a lawyer, is no excuse for the conduct of the defendants. The practice of law should be confined to lawyers without the interposition of unauthorized practitioners who solicit this business directly or indirectly."

The decree in this case permanently enjoined the defendants, their agents and employees from:

(a) Giving legal counsel and advice,

(b) Rendering legal opinions,

(c) Preparing, drafting and construing legal documents,

(d) Preparing estate plans which embody legal analysis, counsel and advice,

*This case is reported in 26 Law Week 2662, and 24 Unauthorized Practice News No. 2, p. 29.

(e) Holding themselves out as persons who prepare estate plans embodying legal analysis, counsel and advice,

(f) Charging and collecting fees for legal counsel, advice, or services rendered by them or their agents, or employees,

(g) From practicing law in any form, or holding themselves out as having a right to practice law, or soliciting employment to prepare estate plans embodying legal analysis, counsel and advice, or from charging, or collecting fees, or payments for legal services rendered by said defendants and each of them or their agents, or employees.

It is not intended by the opinion of this Committee to proscribe activities of those groups which serve various fields related to estate planning unless they involve the performance of legal services as outlined herein. Activities geared to motivating the individual concerned to do something about his affairs and to seek the advice of his own lawyer as early as possible, preferably from the outset, with regard to the development of an over-all estate plan, are in the public interest. Advice on matters of law with respect to particular factual situation of the individual concerned, however, must not be given.

The activities of lay groups described above should conform to the standards of propriety set forth in the several Statements of Principles developed through the Conference method between the American Bar Association and various business and professional groups. Moreover, because of the shadowy borderline between an analysis of facts and assets of an estate and the application of legal principles to them it is clearly within the spirit of the several Statements of Principles that the activities of these groups should be performed in close cooperation with the client's own attorney. It is contemplated that any disputes which may arise with respect to the activities of such business and professional groups shall be governed by such Statements of Principles. The understandings reached in these Principles have served to encourage the public to seek proper legal guidance, the lay groups not to transgress upon the sphere of activity properly reserved for the legal profession, and to bring about better understanding and cooperation between these groups and the Bar.

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